

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1303 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

-----  
VITHALBHAI SHIVABHAI PANCHAL

Versus

HARIBHAI VAJABHAI PRAJAPATI & ANR

-----  
Appearance:

MS KJ BRAHMBHATT for Petitioner

MR BN PATEL for Respondent No. 1

MR DARSHAN M PARIKH for Respondent No. 2

-----  
CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 18/12/98

ORAL JUDGEMENT

Admit. Mr.B.N.Patel, the learned advocate appears on behalf of the respondent no.1 and Mr. Darshan Parikh, the learned advocate appears on behalf of the respondent no.2. They waive the service of notice of admission. At the request of the learned advocates for the parties, the appeal is taken on hand for final hearing to day itself.

2. This appeal is directed against the judgment and award dt. 16th December, 1996 passed by the learned Chairman of Motor Accident Claims Tribunal for the District of Sabarkantha at Himatnagar awarding the compensation of Rs.39,108/-.

3. Necessary facts may, in brief, be stated. The applicant, who is the black-smith, was standing in his court-yard at 12-00 hrs. on 4th November, 1992. The trolley fastened with tractor was loaded with stones & sand. It was to be unloaded near his house. As necessity arose, the respondent no.1 who was the driver as well as the owner of the tractor and trolley took the same to reverse at the excessive speed, as a result, the trolley turned turtled and the appellant, who was standing nearby, was injured as stones fell on his body. He sustained fracture of femur bone and other minor injuries. He was, therefore, taken to hospital for treatment, where he was hospitalised for four months and had to take rest for two and half months at home. At the time of accident, he was aged 40 years and was earning about Rs.2,000/- per month. He then filed Motor Accident Claim Petition No. 64 of 1993 in the Motor Accident Claims Tribunal for the District of Sabarkantha at Himatnagar. The Tribunal, hearing the parties and appreciating the evidence on record, in all, awarded the compensation of Rs.39,108/- against the claim of Rs.1,00,000/- . The appellant found that the compensation awarded was meagre. He ought to have been awarded the claim in full. He has, therefore, preferred this appeal for enhancement of the compensation.

4. Only point that arises for consideration in this appeal is whether the amount awarded is reasonable and fair or some more amounts are required to be awarded. Perusing the copies of the evidence adduced and the copy of the judgment produced, I find that to some extent enhancement in the claim is required to be made. The appellant sustained fracture of femur bone. For about three and half months either in the hospital or at home, he had to take rest, passing through excruciating pain, for which the Tribunal has awarded Rs.5,000/-, but looking to the period of pain and also disability, he has permanently sustained, the Tribunal ought to have awarded Rs.7,500/- under heads -Pain, Shock and Sufferings.

5. As per the certificate of the Doctor, there is shortening of leg by 1". The appellant will have to limp while walking and would not be able to attend his daily pursuits with that fervor and vigore with which he was,

prior to the accident. The Doctor has assessed the disability at 45% . Considering the body as a whole, it would come to round about 21% which is also adopted by the Tribunal. The Tribunal has assessed the income at Rs.850/- per month drawing inferences. Of course, the appellant has come forward with the say that his monthly income was Rs.2,000/- per month, when the accident occurred, but looking to the evidence that has been shown to me and also in a small village wherein he is doing his black-smith work, on the basis of reasonable guess work, it can be believed that he must be earning Rs.1,000/- per month. Keeping that income to be the base, the sums of 21% disability when calculated, the same would come to Rs. 2,520/- per year. As he was aged 40 years, the Tribunal has adopted 11 multiplier and I see no reason to interfere with the same. Adopting the said multiplier, if yearly loss is calculated, it would come to Rs. 27,720/-, which must be awarded instead of Rs.23,562/- awarded by the Tribunal under the head " permanent partial disability".

6. For about three and half months, the appellant could not do his business and earned. He, therefore, sustained loss of income. The Tribunal has awarded Rs.2,975/- under the head " loss of income ", but the loss has to be computed on the basis of income of Rs.1,000/- per month. To have round figure, it would not be unjust, if loss of income for four months is awarded. The appellant is, therefore, entitled to Rs.4,000/- under the head "loss of income".

7. Under the head "nursing and care" Rs.7,000/-, for conveyance Rs.1,000/- and for special diet Rs.1,000/have been awarded for which there is no dispute. Thus if the amount of compensation under different heads are computed, the total thereof comes to Rs.46,791/- and by rounding of, it must be taken to be Rs.47,000/-. The appellant is, therefore, in all entitled to Rs.47,000/but the Tribunal has awarded Rs.39,108/-. To this extent, therefore, the award is required to be modified. On no other point, submission is made by either of the parties.

8. For the aforesaid reasons, the appeal is required to be partially allowed. The same is accordingly allowed. The award dt. 16th December, 1996 passed by the Tribunal is modified to the extent that the opponents shall pay Rs.47,000/- (Rs. Forty seven thousand only) instead of Rs.39,108/- (Rs. Thirty nine thousand one hundred eight only) together with interest at the rate of 12% p.a. from the date of the petition till realisation and shall also pay the costs in proportion. Rest of the

award is maintained.

(ccshah) \*\*\*\*\*